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INDIAN AFFAIRS

LAWS AND TREATIES

VOL. IV

(LAWS)

COMPILED TO MARCH 4, 1927

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BY

CHARLES J. KAPPLER, LL. M.

OF THE BAR OF THE DISTRICT
OF COLUMBIA



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THE CODE OF LAWS OF THE UNITED STATES OF AMERICA OF A
GENERAL AND PERMANENT CHARACTER IN FORCE DECEMBER
7, 1925.

June 30, 1926.
[H. R. 10,000.]
44 Stat., pt. 1, pp.
689-721.

An Act To consolidate, codify, and set forth the general and permanent laws of the United States in force December seventh, nineteen hundred and twenty-five.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the fifty titles hereinafter set forth are intended to embrace the laws of the United States, general and permanent in their nature, in force on the seventh day of December, nineteen hundred and twenty-five, compiled into a single volume under the authority of Congress, and designated "the Code of the Laws of the United States of America."

SEC. 2. In all courts, tribunals, and public offices of the United States, at home or abroad, of the District of Columbia, and of each State, Territory, or insular possession of the United States—

(a) The matter set forth in the Code, evidenced as hereinafter in this section provided, shall establish prima facie the laws of the United States, general and permanent in their nature, in force on the seventh day of December, nineteen hundred and twenty-five; but nothing in this act shall be construed as repealing or amending any such law, or as enacting as new law any matter contained in the Code. In case of any inconsistency arising through omission or otherwise between the provisions of any section of this Code and the corresponding portion of legislation heretofore enacted effect shall be given for all purposes whatsoever to such enactments.

(b) Copies of this Act printed at the Government Printing Office and bearing its imprint shall be conclusive evidence of the original of the Code in the custody of the Secretary of State.

(c) The Code may be cited as "U. S. C."

Approved, June 30, 1926.

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TITLE 25.—INDIANS.

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Chap.	Sec.	Chap.	Sec.
1. Bureau of Indian Affairs.....	1	7. Education of Indians.....	271
2. Officers of Indian Affairs.....	21	8. Rights of way through Indian lands.....	311
3. Agreements with Indians.....	71	9. Allotment of Indian lands.....	331
4. Performance by United States of obligations to Indians.....	91	10. Descent and distribution; heirs of allottee.....	371
5. Protection of Indians.....	171	11. Irrigation of allotted lands.....	381
6. Government of Indian country and reservations.....	211	12. Lease, sale, or surrender of allotted or unallotted lands.....	391
		13. Ceded Indian lands.....	421

CHAPTER 1.—BUREAU OF INDIAN AFFAIRS.

Sec.	Sec.
1. Commissioner of Indian Affairs.	8. Accounts for claims and disbursements.
2. Duties of commissioner.	9. Regulations by President.
3. Compilation of statutes regulating duties of Indian agents and inspectors.	10. Employee to sign letters
4. Defective record of deeds and papers legalized.	11. Employee or employees to sign approval of tribal deeds.
5. Record of deeds by Indians requiring approval.	12. Agent to negotiate commutation of annuities.
6. Seal; authenticated and certified documents; evidence.	13. Expenditure of appropriations by Bureau of Indian Affairs.
7. Fees for furnishing certified copies of records.	

SECTION 1. *Commissioner of Indian Affairs.*—There shall be in the Department of the Interior a Commissioner of Indian Affairs, who shall be appointed by the President, by and with the advice and consent of the Senate. (R. S., § 462; Jan. 24, 1923, c. 42, 42 Stat. 1180.)

LAWS RELATING TO INDIAN AFFAIRS.

SEC. 118. *Payments in satisfaction of judgments.*—Payments to Indians made from moneys appropriated by Congress in satisfaction of the judgment of any court shall be made under the direction of the officers of the Interior Department charged by law with the supervision of Indian affairs, and all such payments shall be accounted for to the Treasury in conformity with law. (Mar. 3, 1911, c. 210, § 28, 36 Stat. 1077.)

HISTORICAL NOTE.

This section was derived from section 28 of the above-cited act of 1911 which was the Indian appropriation act for the fiscal year 1912.

SEC. 119. *Allotment of tribal funds to individual Indians.*—The Secretary of the Interior is authorized, in his discretion, from time to time, to designate any individual Indian belonging to any tribe or tribes whom he may deem to be capable of managing his or her affairs, and he may cause to be apportioned and allotted to any such Indian his or her pro rata share of any tribal or trust funds on deposit in the Treasury of the United States to the credit of the tribe or tribes of which said Indian is a member, and the amount so apportioned and allotted shall be placed to the credit of such Indian upon the books of the Treasury, and the same shall thereupon be subject to the order of such Indian: *Provided*, That no apportionment or allotment shall be made to any Indian until such Indian has first made an application therefor: *Provided further*, That the Secretaries of the Interior and of the Treasury are directed to withhold from such apportionment and allotment a sufficient sum of the said Indian funds as may be necessary or required to pay any existing claims against said Indians that may be pending for settlement by judicial determination in the Court of Claims or in the Executive Departments of the Government, at time of such apportionment and allotment. (Mar. 2, 1907, c. 2523, § 1, 34 Stat. 1221.)

HISTORICAL NOTE.

This section was derived from section 1 of the above-cited act of 1907, which section together with the following section constituted the whole of said act which was entitled "An act providing for the allotment and distribution of Indian tribal funds."

NOTES OF DECISIONS.

1. *Power of Congress to control payment of funds to incompetent Indians—Exhaustion of power.*—The Act of June 28, 1906 (34 Stat. 539), as amended by Act of April 18, 1912 (37 Stat. 86), making provision by section 4 with respect to the Osage Tribe of Indians, similar to that of the Code section that all the funds of such tribe shall be segregated as soon after January 1, 1907, as is practicable and placed to the credit of the individual members of such tribe on a basis of a pro rata division among such members, did not exhaust the power of Congress to prescribe conditions under which payment of such funds should be made to certain classes of Indians and Act of March 3, 1921, requiring a portion of the share of the income of incompetent Indians not under guardianship to be withheld and invested for them was valid. *Ne-kah-wah-she-tun-kah v. Fall* (1923), 290 F. 303, 53 App. D. C. 328, appeal dismissed (1925), 45 S. Ct. 224, 266 U. S. 595, 69 L. Ed. 458.

2. *Discretion of Secretary of Interior as to payment and investment of funds of incompetent allottees.*—Act March 3, 1921, § 4, makes it the duty of Secretary of Interior to cause payments of income of Osage Indians to be made in amounts and at times specified and to invest excess in prescribed securities or to deposit it in prescribed banks for benefit of those to whom it is owing, but where payment is to guardian, county court alone is empowered to direct and control investment of what is paid in view of Act April 18, 1912, § 3, though under latter statute secretary may invoke action by county court in respect of any matter affecting Indian ward's estate and is entitled to full consideration of matter presented but can exercise no direct control over use or investment of money after it is paid to guardian. *Work v. U. S.* (Dist. Col. 1924), 45 S. Ct. 39. Accordingly where payment of oil royalties under Act June 28, 1906, c. 3572, 34 Stat. 539, is to guardian Secretary of Interior has no discretion in matter of payment and investment. *Work v. U. S.* (Dist. Col. 1924), 45 S. Ct. 39.

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SEC. 120. *Per capita payments to enrolled members of Choctaw and Chickasaw Tribes.*—The Secretary of the Interior, under rules and regulations to be prescribed by him, is authorized to make per capita payments of not to exceed \$200 annually to the enrolled members of the Choctaw and Chickasaw Tribes of Indians of Oklahoma, entitled under existing law to share in the funds of said tribes, or to their lawful heirs, of all the available money held by the Government of the United States for the benefit of said tribes in excess of that required for expenditures authorized by annual appropriations made therefrom or by existing law. (Feb. 14, 1920, c. 75, § 18, 41 Stat. 426.)¹

HISTORICAL NOTE.

This section was derived from a part of section 18 of the above-cited act which was the Indian appropriation act for the fiscal year 1921.

SEC. 121. *Payment of share of tribal funds to helpless Indians.*—The pro rata share of any Indian who is mentally or physically incapable of managing his or her own affairs may be withdrawn from the Treasury in the discretion of the Secretary of the Interior and expended for the benefit of such Indian under such rules, regulations, and conditions as the said Secretary may prescribe: *Provided*, That said funds of any Indian shall not be withdrawn from the Treasury until needed by the Indian and upon his application and when approved by the Secretary of the Interior. (Mar. 2, 1907, c. 2523, § 2, 34 Stat. 1221; May 18, 1916, c. 125, § 1, 39 Stat. 128.)

HISTORICAL NOTE.

The derivative section 2 of the above-cited act of 1907, which was part of an act providing for the allotment and distribution of Indian tribal funds (section 1 of said act being the derivative section for section 119 of this title), read as follows:

"The Secretary of the Interior is hereby authorized to pay any Indian who is blind, crippled, decrepit, or helpless from old age, disease, or accident, his or her share, or any portion thereof, of the tribal trust funds in the United States Treasury belonging to the tribe of which such Indian is a member, and of any other money which may hereafter be placed in the Treasury for the credit of such tribe and susceptible of division among its members, under such rules, regulations, and conditions as he may prescribe."

It was amended by section 1 of the above-cited act of 1916, which was the Indian appropriation act for the fiscal year 1917, to read as set forth in the Code section.

SEC. 122. *Limitation on application of tribal funds.*—No funds belonging to any Indian tribe with which treaty relations exist shall be applied in any manner not authorized by such treaty, or by express provisions of law; nor shall money appropriated to execute a treaty be transferred or applied to any other purpose, unless expressly authorized by law. (R. S. § 2097.)

HISTORICAL NOTE.

The above-cited section of the Revised Statutes was derived from section 2 of Act July 26, 1866, c. 266, 14 Stat. 280.

CROSS REFERENCES.

For authority to divert Indian tribe funds, with consent of the interested Indian tribes, conferred by Act March 1, 1907, c. 2285, 34 Stat. 1016, see section 140 of this title.

NOTES OF DECISIONS.

1. *Intention of statute.*—This and the succeeding section show that the policy of the United States is to adhere sacredly to their treaty obligations with the Indian tribes, and to protect by legislation such tribes from the misapplication of their funds arising out of treaty stipulations. *Leighton v. U. S.* (1894) 29 Ct. Cl. 288, affirmed (1896) 16 S. Ct. 495, 161 U. S. 291, 40 L. Ed. 703.

¹ For "426" read "427."

from, all tribal funds of Indians for the ensuing fiscal year; and such statement shall show (first) the total amounts estimated to be received from any and all sources whatsoever, which will be placed to the credit of each tribe of Indians, in trust or otherwise, at the close of the ensuing fiscal year, (second) an analysis showing the amounts which the Federal Government is directed and required by treaty stipulations and agreements to expend from each of said funds or from the Federal Treasury, giving references to the existing treaty or agreement or statute, (third) the amounts which the Secretary of the Interior recommends to be spent from each of the tribal funds held in trust or otherwise, and the purpose for which said amounts are to be expended, and said statement shall show the amounts which he recommends to be disbursed (a) for per capita payments in money to the Indians, (b) for salaries or compensation of officers and employees, (c) for compensation of counsel and attorney fees, and (d) for support and civilization. (May 18, 1916, c. 125, § 27, 39 Stat. 158.)

HISTORICAL NOTE.

This section was derived from a part of section 27 of the above-cited act which was the Indian appropriation act for the fiscal year 1917. The remaining portion of said section 27, prohibiting expenditures from Indian tribal funds without specific appropriation by Congress, is set forth in section 123 of this title.

CROSS REFERENCES.

Duty of Secretary of Interior to annually report to House of Representatives on fiscal affairs of Indian tribes, see section 143 of this title.

SEC. 143. *Statement of fiscal affairs of Indian tribes.*—Annually, on the first Monday in December, the Secretary of the Interior shall transmit to the Speaker of the House of Representatives a statement of the fiscal affairs of all Indian tribes for whose benefit expenditures from either public or tribal funds shall have been made by any officer, clerk, or employee in the Interior Department during the preceding fiscal year; and such statement shall show (1) the total amount of all moneys, from whatever source derived, standing to the credit of each tribe of Indians, in trust or otherwise, at the close of such fiscal year; (2) an analysis of such credits, by funds, showing how and when they were created, whether by treaty stipulation, agreement, or otherwise; (3) the total amount of disbursements from public or trust funds made on account of each tribe of Indians for such fiscal year; and (4) an analysis of such disbursements showing the amounts disbursed (a) for per capita payments in money to Indians, (b) for salaries or compensation of officers and employees, (c) for compensation of counsel and attorney's fees, and (d) for support and civilization. (Mar. 3, 1911, c. 210, § 27, 36 Stat. 1077.)

HISTORICAL NOTES.

This section was derived from section 27 of the above-cited act which was the Indian appropriation act for the fiscal year 1912.

CROSS REFERENCES.

As to installation in Bureau of Indian Affairs of system of bookkeeping which will afford a ready analysis of expenditures by appropriations and allotments and by units of the service, see section 688 of Title 31, Money and Finance.

SEC. 144. *Report as to moneys appropriated for encouragement of industry.*—The Secretary of the Interior shall submit to Congress annually on the first Monday in December a detailed report of all moneys appropriated for the purpose of encouraging industry among Indians. (Aug. 1, 1914, c. 222, § 1, 38 Stat. 587.)

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the same, at such issue thereof, whether it be both of food and clothing, or either of them, or of any kind of supplies, to report to the Commissioner of Indian Affairs the number of Indians present and actually receiving the same. (R. S. § 2109.)

HISTORICAL NOTE.

The above-cited section of the Revised Statutes was derived from section 7 of Act of Feb. 14, 1873, c. 138, 17 Stat. 463, 464, being the Indian appropriation act for the fiscal year 1874.

SEC. 147. *Appropriations for specified buildings: use for transportation of materials.*—Appropriations herein or hereafter made for specified buildings in the Indian Service shall be used for the transportation of materials purchased therefrom. (Jan. 12, 1927, c. 27, § 1, 44 Stat. 939.)

New section.—The act cited to the text was entitled "An Act making appropriations for the Department of the Interior for the fiscal year ending June 30, 1928, and for other purposes."

SEC. 148. *Appropriations for supplies; transfer to Indian Service supply fund; expenditure.*—Hereafter from time to time there is authorized to be transferred from each or any appropriation or fund available for the purchase of supplies for the Indian Service, to a fund to be set up and carried on the books of the Treasury as an Indian Service supply fund, such amounts as the Secretary of the Interior may estimate to be required to pay for supplies purchased through Indian warehouses for the Indian field service; and the expenditure of the said Indian Service supply fund for the purpose stated is hereby authorized, necessary adjustments to be made thereafter to the end that each appropriation and fund ultimately will be charged only with the cost of the supplies legally chargeable thereto. (Jan. 12, 1927, c. 27, § 1, 44 Stat. 939.)

New Section.—See note to § 147.

DEPOSIT, CARE, AND INVESTMENT OF INDIAN MONEYS.

SEC. 151. *Deposits in bank by disbursing agents.*—Any United States Indian agent, superintendent, or other disbursing agent of the Indian Service may deposit Indian moneys, individual or tribal, coming into his hands as custodian, in such national bank or banks as he may select: *Provided*, That the bank or banks so selected by him shall first execute to said disbursing agent a bond, with approved surety, in such an amount as will properly safeguard the funds to be deposited. Such bond shall be subject to the approval of the Secretary of the Interior. (Apr. 30, 1908, c. 153, 35 Stat. 73.)

HISTORICAL NOTE.

This section was derived from a provision of the Indian appropriation act for the fiscal year 1909, cited above.

A provision, identical with the Code section, except that the banks which may be selected as depositories are not confined to National banks, is contained in section 1 of Act of June 25, 1910, c. 431, 36 Stat. 855, and set out in section 372 of this title.

*SEC. 152. *Proceeds of sales of Indian lands.*—All moneys received from the sales of lands that have been, or may be, ceded to the United States by Indian tribes, by treaties providing for the investment or payment to the Indians, parties thereto, of the proceeds of the lands ceded by them, respectively, after deducting the expenses of survey and sale, any sums stipulated to be advanced, and the expenses of fulfilling any engagements contained therein, shall be paid into the Treasury in the same manner that moneys received from the sales of public lands are paid into the Treasury. (R. S. § 2093.)

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HISTORICAL NOTE.

The above-cited section of the Revised Statutes was derived from section 1 of Act Jan. 9, 1837, c. 1, § 5 Stat. 135, entitled "An act to regulate, in certain cases, the disposition of the proceeds of lands ceded by Indian tribes to the United States."

NOTES OF DECISIONS.

1. *Cession by Chippewa Indians*.—Act January 14, 1889, c. 24, 25 Stat. 642, authorized relinquishment to United States by Chippewa Indians of their title and interest in certain land and sale thereof to settlers. *U. S. v. Holt State Bank* (C. C. A. Minn. 1923) 294 F. 163, affirmed (1926) 46 S. Ct. 197, 270 U. S. 49, 70 L. Ed. 465.

2. *Disposition of proceeds of sale of lands set apart for Creek Indian orphans*.—A treaty with the Creek tribe of Indians, ceding all their lands east of the Mississippi to the United States, provided that twenty section should be selected under the direction of the President for the orphan children of the Creeks, and divided, and retained or sold for their benefit, as the President might direct. The proceeds of the sale of these selected lands were properly paid into the Treasury under the first section of the Act of Jan. 9, 1837, above cited, and were also liable to be drawn out for investment or payment, whenever the President should so direct, under the second section of the same law, (1837) 3 Op. Atty. Gen. 238.

3. *Liability of United States for embezzlement of moneys of Indian orphans by their guardian*.—Under the Shawnee treaty of May 10, 1854, the tribe became entitled to a certain sum, payable in installments to them individually, the portions of orphan children to be appropriated by the President as he should deem best for them. The President decided to pay them in severalty, and the Shawnee council created guardians, to whom a part of the money was paid. This never reached the orphans and another part was embezzled by a United States officer. Held that, even if the tribe had any claim on the fund, it could not hold the United States liable for the embezzlements of its own appointed "guardians"; and, in the absence of a finding what part of the whole shortage these constituted, there was no basis for a decree against the government. *U. S. v. Blackfeather* (Ct. Cl. 1894) 155 U. S. 180, 15 S. Ct. 64, 39 L. Ed. 114.

4. *Liability of United States for interest on deferred payments*.—Where, in a treaty with the United States, an Indian tribe released their pre-emption right to certain lands, and agreed to give possession on payment of the purchase and improvement money, such payment to be made to the Secretary of War of the United States, held, that the United States acted simply as the agent of the Indians, and were not equitably bound to allow interest on such payments during the time that the Indians refused to deliver possession, according to the treaty. *McKeon v. Tillotson* (N. Y. 1864) 3 Abb. Dec. 110.

5. *Liability of United States for failure to dispose of lands in manner contemplated by terms of cession*.—United States having disposed under the general land laws of lands of the Mille Lac Indian Reservation not filed on instead of selling them as pine or agricultural lands and holding the proceeds for the Indians as contemplated by Act Jan. 14, 1889, under which they were ceded to the United States, is liable to the Indians for the resulting loss, though such disposal was under directions given in joint resolutions December 19, 1893. *U. S. v. Mille Lac Band of Chippewa Indians* (1913) 33 S. Ct. 811, 229 U. S. 498, 57 L. Ed. 1299, reversing (1912) 47 Ct. Cl. 415, distinguishing *Cherokee Nation v. Hitchcock* (Dist. Col. 1902) 23 S. Ct. 115, 187 U. S. 294, 47 L. Ed. 183, and *Lone Wolf v. Hitchcock* (Dist. Col. 1903) 23 S. Ct. 216, 187 U. S. 553, 47 L. Ed. 299.

On the other hand where, in violation of the treaty of Aug. 8, 1831, with the Ohio Shawnees, article 7 of which obliged the United States to expose the lands ceded "to public sale to the highest bidder, in the manner of selling the public lands," after a part of the lands was so sold at a price above \$2 an acre, the rest was sold at private sale at \$1.25, it was held that, though the government failed in its trust by selling at private sale, yet in view of Act April 24, 1820, then in force, which required the public lands to be offered for sale at \$1.25, and made those remaining unsold subject to private sale at that price, and on the assumption that the government acted as it deemed best for the tribe, the proof was against any claim for actual damages. *U. S. v. Blackfeather* (Ct. Cl. 1894) 15 S. Ct. 64, 68, 69, 155 U. S. 180, 39 L. Ed. 114.

SEC. 153. *Appropriation to carry out treaties*.—All sums that are or may be required to be paid and all moneys that are or may be required to be invested by the treaties mentioned in the preceding section are appropriated in conformity to them and shall be drawn from the Treasury as other public moneys are drawn therefrom, under such instructions as may from time to time be given by the President. (R. S. § 2094.)

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HISTORICAL NOTE.

The above-cited section of the Revised Statutes was derived from section 2 of Act Jan. 9, 1837, c. 1, § 5 Stat. 135.

NOTES OF DECISIONS.

1. *Interference by Judiciary with execution of treaty.*—The judiciary can not arrest the execution of a treaty by stopping the money designed to be paid under it in the hands of the agents of the executive. (1839) 3 Op. Atty. Gen. 471.

SEC. 154. *Proceeds of sales of lands not subject to certain deductions.*—No part of the expenses of the public lands service shall be deducted from the proceeds of Indian lands sold through the General Land Office, except as authorized by the treaty or agreement providing for the disposition of the lands. (July 4, 1884, c. 180, § 10, 23 Stat. 98.)

HISTORICAL NOTE.

This section was derived from section 10 of above-cited act which was the deficiency appropriation act for the fiscal year 1884.

SEC. 155. *Disposal of proceeds of pasturage, sales of timber, coal, or other products.*—The proceeds of all pasturage and sales of timber, coal, or other product of any Indian reservation, except those of the Five Civilized Tribes, and not the result of the labor of any member of such tribe, shall be covered into the Treasury for the benefit of such tribe under such regulations as the Secretary of the Interior shall prescribe; and the Secretary shall report his action in detail to Congress at its next session. (Mar. 3, 1883, c. 141, § 1, 22 Stat. 590.)

HISTORICAL NOTE.

This section was derived from section 1 of the above-cited act which was the deficiency appropriation act for the fiscal year 1884.

The Indian Appropriation Act of March 2, 1887, c. 320, § 1, 24 Stat. 463, contained the following provisions: "That the Secretary of the Interior is hereby authorized to use the money which has been or may hereafter be covered into the Treasury under the provisions of the act approved March third, eighteen hundred and eighty-three, and which is carried on the books of that Department under the caption of 'Indian moneys, proceeds of labor,' for the benefit of the several tribes on whose account said money was covered in, in such way and for such purposes as in his discretion he may think best, and shall make annually a detailed report thereof to Congress."

Section 155 of Title 25 amended.—This section was amended in accordance with § 155a, post (Act May 17, 1926, c. 309, § 1, 44 Stat. 560), by § 2 of said Act which provided: "The Act of March 3, 1883 (Twenty-second Statutes at Large, page 590), and the Act of March 2, 1887 (Twenty-fourth Statutes at Large, page 463), are hereby amended in accordance with the foregoing."

Act March 2, 1887, c. 320, 24 Stat. 463, similarly amended by the above-mentioned act read as follows: "The Secretary of the Interior is hereby authorized to use the money which has been or may hereafter be covered into the Treasury under the provisions of the Act approved March 3, 1883, and which is carried on the books of that department under the caption of 'Indian moneys, proceeds of labor,' for the benefit of the several tribes on whose account said money was covered in, in such way and for such purposes as in his discretion he may think best, and shall make annually a detailed report thereof to Congress."

CROSS REFERENCES.

For authority of President to empower Indians to sell dead timber for their sole benefit under Act Feb. 16, 1889, c. 172, see section 196 of this title.

For power of Secretary of Interior to authorize sale of dead timber by Indians on reservations in Minnesota under Act June 7, 1897, c. 3, § 1, see section 197, of this title.

For power of Secretary of the Interior to regulate the sale of mature living and dead and down timber on unallotted lands of any Indian reservation except in Minnesota and Wisconsin, under Act June 25, 1910, c. 431, § 7, see section 407 of this title.

As to power of allottee with consent of Secretary of the Interior to sell timber on Indian allotments held under trust or other restrictive patent, see section 406 of this title.

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NOTES OF DECISIONS.

1. *Right of Indian abandoning tribal life to share in distribution.*—Under Treaty Oct. 18, 1848, Supplemental Treaty May 12, 1854, Act June 12, 1890, and Act March 28, 1908, § 4, 35 Stat. 51, amended by Act May 18, 1916, 39 Stat. 157, providing for cutting of timber on Indian reservation and distribution by Secretary of the Interior of interest on proceeds of timber sold, held, a mixed-blood Indian, whose mother at time of death was recognized member of tribe, was entitled to share in such distribution, notwithstanding such right had been denied at tribal council, and notwithstanding claimant under Act March 3, 1875, section 189 of Title 43, Public Lands, and Act Feb. 8, 1887, by removing from tribal habitation and adopting habits and customs of civilized land, he became citizen of the United States, particularly in view of Act June 7, 1897, expressly reserving to Indians who so abandon tribal life their rights as members of tribe. U. S. ex rel. Besaw v. Work (1925) 6 F. (2d) 694, 55 App. D. C. 391.

SEC. 155a. *Disposal of miscellaneous revenues from Indian reservations, etc.*—Hereafter all miscellaneous revenues derived from Indian reservations, agencies, and schools, which are not required by existing law to be otherwise disposed of, shall be covered into the Treasury of the United States under the caption "Indian moneys, proceeds of labor," and are hereby made available for expenditure, in the discretion of the Secretary of the Interior, for the benefit of the Indian tribes, agencies, and schools on whose behalf they are collected, subject, however, to the limitations as to tribal funds imposed by section 27 of the Act of May 18, 1916 (Thirty-ninth Statutes at Large, page 159). (May 17, 1926, c. 309, § 1, 44 Stat. 560.)

New section.—See note to § 155, ante.

Section 27 of the Act of May 18, 1916, mentioned in the text, is set out in §§ 123 and 142 of Title 25.

SEC. 156. *Deposit of funds from sales of lands and property of Five Civilized Tribes.*—The net receipts from the sales of surplus and unallotted lands and other tribal property belonging to any of the Five Civilized Tribes, after deducting the necessary expense of advertising and sale, may be deposited in national or State banks in the State of Oklahoma in the discretion of the Secretary of the Interior, such depositories to be designated by him under such rules and regulations governing the rate of interest thereon, the time of deposit and withdrawal thereof, and the security therefor, as he may prescribe. The interest accruing on such funds may be used to defray the expense of the per capita payments of such funds. (Mar. 3, 1911, c. 210, § 17, 36 Stat. 1070.)

HISTORICAL NOTE.

This section was derived from section 17 of the above-cited act, which was the Indian appropriation act for the fiscal year 1912.

SEC. 157. *Investments of stock required by treaties.*—All investments of stock, that are or may be required by treaties with the Indians, shall be made under the direction of the President; and special accounts of the funds under such treaties shall be kept at the Treasury, and statements thereof be annually laid before Congress. (R. S. § 2095.)

HISTORICAL NOTE.

The above-cited section of the Revised Statutes was derived from section 3 of Act Jan. 9, 1837, c. 1, 5 Stat. 135.

See historical note under section 152 of this title.

SEC. 158. *Investment of proceeds of lands.*—The Secretary of the Interior shall invest in a manner which shall be in his judgment most safe, and beneficial for the fund, all moneys that may be received under treaties containing stipulations for the payment to the Indians, annually, of interest upon the proceeds of the lands ceded by them; and he shall make no investment of such moneys, or of any portion, at a lower rate of interest than 5 per centum per annum. (R. S. § 2096.)

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See historical note under section 152 of this title.

CROSS REFERENCES.

For subsequent provisions for the custody, etc., of Indian trust funds, made by Act of June 10, 1876, c. 122, and Act of April 1, 1880, c. 41, see sections 160 and 161 of this title.

SEC. 159. *Moneys due incompetents or orphans.*—The Secretary of the Interior is directed to cause settlements to be made with all persons appointed by the Indian councils to receive moneys due to incompetent or orphan Indians, and to require all moneys found due to such incompetent or orphan Indians to be returned to the Treasury; and all moneys so returned shall bear interest at the rate of 6 per centum per annum, until paid by order of the Secretary of the Interior to those entitled to the same. No money shall be paid to any person appointed by any Indian council to receive moneys due to incompetent or orphan Indians, but the same shall remain in the Treasury of the United States until ordered to be paid by the Secretary to those entitled to receive the same, and shall bear 6 per centum interest until so paid. (R. S. § 2108.)

HISTORICAL NOTE.

The above-cited section of the Revised Statutes was derived from section 6 of Act July 5, 1862, c. 135, 12 Stat. 529, being the Indian appropriation act for the fiscal year 1863.

NOTES OF DECISIONS.

1. *Liability of United States on account of payments to guardians prior to enactment of section.*—It will be assumed that payments made under the Shawnee Indian Treaty of May 10, 1854, to guardians of orphan children appointed by the Shawnee Indian Council were made before Act July 5, 1862, the sixth section of which is embodied in this section, and the United States is not liable for embezzlement by such guardians. *U. S. v. Blackfeather* (Ct. Cl. 1894) 15 S. Ct. 64, 70, 155 U. S. 180, 39 L. Ed. 114.

SEC. 160. *Custody of stocks or bonds held in trust for tribes.*—All stocks, bonds, or other securities or evidences of indebtedness held by the Secretary of the Interior on June 10, 1876, in trust for the benefit of certain Indian tribes shall, within thirty days from that date, be transferred to the Treasurer of the United States, who shall become the custodian thereof; and it shall be the duty of said Treasurer to collect all interest falling due on said bonds, stocks, and so forth, and deposit the same in the Treasury of the United States, and to issue certificates of deposit therefor, in favor of the Secretary of the Interior, as trustees for various Indian tribes. And the Treasurer of the United States shall also become the custodian of all bonds and stocks which may be purchased for the benefit of any Indian tribe or tribes after the transfer of funds herein authorized, and shall make all purchases and sales of bonds and stocks authorized by treaty stipulations or by acts of Congress when requested so to do by the Secretary of the Interior: *Provided*, That nothing in this section shall in any manner impair or affect the supervisory and appellate powers and duties in regard to Indian affairs which may be vested in the Secretary of the Interior as trustee for various Indian tribes, except as to the custody of said bonds and the collection of interest thereon as hereinbefore mentioned. (June 10, 1876, c. 122, 19 Stat. 58.)

HISTORICAL NOTE.

The above-cited section was entitled "An act transferring the custody of certain Indian trust funds."

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NOTES OF DECISIONS.

1. *Power of Secretary of Interior as trustee with respect to sale of past due bonds.*—Where state bonds, held by the United States Treasurer in trust for certain of the Indian tribes, are past due and payment thereof has been refused by the treasurer of the state, the Secretary of the Interior, in the performance of his duties as trustee, has power to authorize the acceptance of a proposition made by a third person to purchase such bonds at their face value with accrued interest, provided the market value does not exceed the face value with accrued interest, and provided the acceptance will best subserve the interests of the trust. (1887) 18 Op. Atty. Gen. 581.

SEC. 161. *Deposit in Treasury of trust funds.*—The Secretary of the Interior is authorized to deposit, in the Treasury of the United States, any and all sums held by him on April 1, 1880, or which may be received by him, as Secretary of the Interior and trustee of various Indian tribes, on account of the redemption of United States bonds, or other stocks and securities belonging to the Indian trust fund, and all sums received on account of sales of Indian trust lands, and the sales of stocks lately purchased for temporary investment, whenever he is of the opinion that the best interests of the Indians will be promoted by such deposits, in lieu of investments; and the United States shall pay interest semiannually, from the date of deposit of any and all such sums in the United States Treasury, at the rate per annum stipulated by treaties or prescribed by law, and such payments shall be made in the usual manner, as each may become due, without further appropriation by Congress. (Apr. 1, 1880, c. 41, 21 Stat. 70.)

HISTORICAL NOTE.

The above-cited act was one entitled "An act to authorize the Secretary of the Interior to deposit certain funds in the United States Treasury in lieu of investment."

NOTES OF DECISIONS.

1. *Section as recognizing policy to pay interest on funds held in trust.*—This section, so far as it reaches, is an approval by Congress of the policy of allowing interest to Indian tribes upon their funds held in trust and deposited in the Treasury. (1893) 20 Op. Atty. Gen. 517. See *Blackfeather v. U. S.* (1893) 28 Ct. Cl. 447 (reversed on other grounds [1894] 15 S. Ct. 64, 155 U. S. 180, 39 L. Ed. 114), holding that under Indian treaties a fund drew interest. And an agreement made with certain Indians by duly appointed commissioners, whereby a portion of the purchase money of Indian lands was retained in trust and was to be placed in the Treasury and interest paid thereon, was held to be in line with such policy, and to be valid and binding. (1893) 20 Op. Atty. Gen. 517.

2. *Authority of Secretary of Interior to sell bonds held in trust.*—The Secretary of the Interior has authority as trustee for Indian tribes to sell United States called bonds held in trust for the tribes in order that the fund may receive the premium. (1881) 7 Op. Atty. Gen. 104.

SEC. 162. *Segregation, deposit, and investment of tribal funds.*—The Secretary of the Interior is authorized, under such rules and regulations as he may prescribe, to withdraw from the United States Treasury and segregate the common, or community funds of any Indian tribe which are, or may hereafter be, held in trust by the United States, and which are susceptible of segregation, so as to credit an equal share to each and every recognized member of the tribe except those whose pro rata shares have already been withdrawn under existing law, and to deposit the funds so segregated in banks to be selected by him, in the State or States in which the tribe is located, subject to withdrawal for payment to the individual owners or expenditure for their benefit under the regulations governing the use of other individual Indian moneys. The said Secretary is also authorized, under such rules and regulations as he may prescribe, to withdraw from the Treasury and deposit in banks in the State or States in which the tribe is located to the credit of the respective tribes, such common, or community, trust funds as are not susceptible of segregation as aforesaid, and on which the United States is not obligated

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by law to pay interest at higher rates than can be procured from the banks: *Provided*, That no tribal or individual Indian money shall be deposited in any bank until the bank shall have agreed to pay interest thereon at a reasonable rate and shall have furnished an acceptable bond or collateral security therefor, and United States bonds may be furnished as collateral security for either tribal or individual funds so deposited, in lieu of surety bonds: *Provided further*, That the Secretary of the Interior, if he deems it advisable and for the best interest of the Indians, may invest the trust funds of any tribe or individual Indian in United States Government bonds: *And provided further*, That any part of tribal funds required for support of schools or pay of tribal officers shall be excepted from segregation or deposit as herein authorized and the same shall be expended for the purposes aforesaid: *Provided however*, That the funds of any tribe shall not be segregated until the final rolls of said tribe are complete: *And provided further*, That the foregoing shall not apply to the funds of the Five Civilized Tribes, or the Osage Tribe of Indians, in the State of Oklahoma, but the funds of such tribes and individual members thereof shall be deposited in the banks of Oklahoma or in the United States Treasury and may be secured by the deposit of United States bonds. (May 25, 1918, c. 86, § 28, 40 Stat. 591.)

HISTORICAL NOTE.

This section was derived from section 28 of the above-cited act which was the Indian appropriation act for the fiscal year 1919.

SEC. 163. *Roll of membership of Indian tribes.*—The Secretary of the Interior is authorized, wherever in his discretion such action would be for the best interest of the Indians, to cause a final roll to be made of the membership of any Indian tribe; such rolls shall contain the ages and quantum of Indian blood, and when approved by the said Secretary are declared to constitute the legal membership of the respective tribes for the purpose of segregating the tribal funds as provided in the preceding section, and shall be conclusive both as to ages and quantum of Indian blood: *Provided*, That the foregoing shall not apply to the Five Civilized Tribes or to the Osage Tribe of Indians, or to the Chippewa Indians of Minnesota, or the Menominee Indians of Wisconsin. (June 30, 1919, c. 4, § 1, 41 Stat. 9.)

HISTORICAL NOTE.

This section was derived from a provision of section 1 of the above-cited act which was the Indian appropriation act for the year 1920.

NOTES OF DECISIONS.

1. *Effect, as evidence, of enrollment records of Five Civilized Tribes.*—See notes under section 348 of this title.

The Commission to the Five Civilized Tribes which made the enrollment of their citizens and freedmen was a quasi-judicial tribunal empowered to determine who should be enrolled and what land should be allotted and in what way it should be allotted to every citizen and freedman, and its adjudication of these questions and of every issue of law and fact that it was necessary for it to determine in order to decide these questions is conclusive and impervious to collateral attack. But its determination, recital or report regarding issues not material to its answers to the questions who should be enrolled and what lands should be allotted to them and how, is, in the absence of special legislation, without judicial or other conclusive effect. *Malone v. Alderdice* (Okla. 1914) 212 F. 668, 129 C. C. A. 204, wherein it was held that the Commission in making its enrollment had no authority or jurisdiction to decide and adjudge the respective ages of the members of the tribes.

Determination by Commission to Five Civilized Tribes, created by Act June 10, 1896, as to right of enrollment of citizens of Choctaw, Chickasaw, Cherokee, Creek, and Seminole Indians of Indian Territory, the source of such right, and whether it existed as a citizen by blood, by adoption, or a freedman citizen of the tribe, is conclusive. Acts of Congress, subsequent to Act June 10, 1896, creating Commission to Five Civilized Tribes, dealing with rights of citizens of such tribes

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